IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 1116 OF 1997

Miss. Angelas Francis .. Petitioner

Vs.

Miss Andrey D'souza and anr. .. Respondents

None for the Petitioner.
Mr. Sarang Aradhye h/f Mr. R.V. Govilkar for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : August 10, 2005.

ORAL JUDGMENT :

1. This revision application was admitted on 7/11/1997 and hearing was expedited. When it appeared for final hearing on 7/3/2002 none was present for the petitioner and, therefore, it was dismissed in default. It came to be restored by an order dated 26/3/2002 by allowing Civil Application No.93 of 2003. When it is called out today for final hearing, none is present for the petitioner. I, therefore, feel it appropriate to proceed to decide the revision application on merits.

2. Civil Suit No.2033 of 1983 was decided by the

learned Principal Judge of the Small Causes Court at Pune and the said order was challenged in Civil Appeal No.844 of 1988 before the District Court. The learned Additional District Judge at Pune by his Judgment and Decree dated 30/10/1991 allowed the appeal. However, this decree passed by the Lower Appellate Court, on challenge in Writ Petition No.5886 of 1991, came to be modified as under:-

" The petitioner-tenants are entitled to retain the possession of one room (living room) admeasuring about 14’6" x 10’ as shown in the map and marked as Exhibit ‘A’ hereto and marked as A, B, C, D as tenants at a monthly rent of Rs.50/- (rupees fifty only). The petitioners shall get installed at their expense separate electric sub-meter. The petitioner shall use it for residential use only and shall not induct any other person and/or presons.

. The petitioner-tenants are entitled to construct a Sanitary Block as shown in the map which is annexed hereto and marked as Exhibit "B".

. The petitioner-tenants shall bear the necessary expenses for constructing a Sanitary Block.

. The Respondent-landlords shall make use of the entrance on the rear side as shown in the map at Exhibit "A".

. The petitioner-tenants shall do the aforesaid construction within three months from today. The petitioners undertake to this Hon’ble Court to hand over vacant and peaceful

possession of the remaining premises except the room admeasuring 14.6 x 10' on or before 31st May 1992 to Respondent Nos.1 and 2.

. The door between the living room and the bedroom shall be permanently closed.

. Respondent Nos.1 and 2, that is plaintiffs, hereby give necessary no-objection for effecting the aforesaid construction and for obtaining necessary permission for installation for separate electric sub-meter."

3. Taking advantage of the order passed by this court in Writ Petition No.5886 of 1991, the landlady filed Mesne Profits Application No.2033 of 1983 before the Small Causes Court at Pune and the same was rejected vide the order dated 3/7/1995. The landlady, therefore, filed Civil Appeal No.913 of 1995 which came to be dismissed by the learned 8th Addl. District Judge, Pune vide his Judgment and Order dated 17/6/1997. These concurrent views of the courts below, dismissing the application for mesne profits has been assailed in this revision application.

4. The learned Additional Judge of the Small Causes Court in his order dated 3/7/1995, on perusal of the order passed by this court in Writ Petition No.5886 of 1991, observed that the decree modified by

this court did not speak about the clause of mesne profits and the decree passed by the Lower Appellate Court stood merged in terms of the order of this court. When the clause of mesne profits was not finding place in the order passed by this court, it was clear that the right to claim mesne profits did not remain any further or in the alternative it was refused. It was contended by the petitioner-plaintiff that no such specific observation was made by this court in its order in Writ Petition No.5886 of 1991 so as to set aside the decree of the trial court or the Lower Appellate Court regarding mesne profits. The Small Causes Court did not find any merits in these submissions and it rightly noted that it could not have the powers to interpret the order passed by this court by giving different meaning to the compromised terms recorded in the aforesaid writ petition.

4A. The Lower Appellate Court noted that minutes of the order were recorded in the writ petition and on the basis of the compromise terms agreed between the parties and, therefore, they had both agreed to omit the issue of payment of mesne profits. In the order passed by this court in Writ Petition No.5886 of 1991

the tenants were permitted to retain the possession of the suit premises till 31/8/1992 and in case they failed to put the landlady in possession thereafter, mesne profits could be charged. However, the landlady had obtained the possession of the premises on 20/8/1992 itself and, therefore, the issue for payment of mesne profits did not arise. Obviously, the application for mesne profits was moved by the landlady on erroneous interpretation of the order passed by this Court and it has been rightly turned down by both the courts below.

5. In the premises, no interference is called for in the concurrent view taken by the courts below and, therefore, this civil revision application fails. The same is hereby dismissed. Rule discharged. No costs.

(B.H. Marlapalle,J.)